

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
SIGNAL ELECTRIC, INC., )  
 )  
Appellant, )  
 )  
v. )  
 )  
SOUTHWEST AIR POLLUTION )  
CONTROL AUTHORITY, )  
 )  
Respondent. )

PCHB No. 77-186

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of a \$50 civil penalty for tar pot emissions allegedly in violation of WAC 173-400-040 (opacity), came on for hearing before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, and Chris Smith, Member, convened at Lacey, Washington on April 5, 1978. Hearing examiner William A. Harrison presided. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant was represented by its President, L. R. Guthmiller and by Stephen Washburn. Respondent was represented by its attorney, James D. Ladley. Court reporter Christina M. Check of Olympia reported the

1 proceedings.

2 Witnesses were sworn and testified. Exhibits were examined. From  
3 testimony heard and exhibits examined, the Pollution Control Hearings  
4 Board makes these

5 FINDINGS OF FACT

6 I

7 Respondent, Southwest Air Pollution Control Authority, contends  
8 that appellant has violated WAC 173-400-040, a regulation of the State  
9 Department of Ecology implementing the Clean Air Act, chapter 70.94 RCW.  
10 That regulation provides, in pertinent part:

11 WAC 173-400-040 GENERAL STANDARDS FOR MAXIMUM PERMISSIBLE  
12 EMISSIONS. (1) Visible emissions.

13 No person shall cause or permit the emission for more than  
14 three minutes, in any one hour, of an air contaminant from any  
15 source which at the emission point, or within a reasonable  
16 distance of the emission point, exceeds 20% opacity except as  
17 follows:

18 (a) When the person responsible for the source can demon-  
19 strate that the emissions in excess of 20% will not exceed 15  
20 minutes in any consecutive 8 hours.

21 (b) When the owner or operator of a source supplies valid  
22 data to show that the opacity is in excess of 20% as the result  
23 of the presence of condensed water droplets, and that the  
24 concentration of particulate matter, as shown by a source test  
25 approved by the director, is less than one-tenth (0.10) grains  
26 per standard dry cubic foot. For combustion emissions the  
27 exhaust gas volume shall be corrected to 7% oxygen.

28 . . . . .

29 II

30 On December 6, 1977, the appellant's work crew was improving  
31 the road surface near the 39th Street on-ramp to Interstate 5 in  
32 Vancouver, Washington. Their equipment included a tar pot (tanker)  
33 owned by appellant, which contained the molten asphalt being used in the  
34 improvement. The temperature inside the tanker was kept at 350°F. to

35 FINAL FINDINGS OF FACT,  
36 CONCLUSIONS OF LAW AND ORDER

1 375°F. by a propane-fired heater.

2 A white plume of smoke (condensed hydrocarbons) was emanating from  
3 the open lid on top of the tar pot. Although the weather was misty,  
4 and although asphalt blocks may sometimes be wet when the tar pot is  
5 charged, no significant portion of the white plume would consist of  
6 steam. No source test, as described in WAC 173-400-040(1)(b), was  
7 conducted.

8 The white smoke plume attracted the attention of one of respondent's  
9 employees who was passing by, and an inspector for the respondent  
10 visited the scene. Beginning at 4:04 p.m. and for 16 consecutive  
11 minutes, the inspector conducted a visual observation of the plume coming  
12 from appellant's tar pot. Sunset occurred at 4:23 p.m. on the day  
13 in question according to the records of the National Oceanic and  
14 Atmospheric Administration, U. S. Department of Commerce, of which  
15 we take official notice. Appellant caused emissions aggregating at  
16 least 16 minutes in one hour which were of an opacity exceeding 30 percent.

17 The tar pot lid from which the emissions arose was opened to  
18 allow the pot to be easily charged with asphalt as well as allowing the  
19 filling of tar buckets. The lid remained open, however, when neither  
20 charging nor bucket-filling were taking place.

21 Appellant received a "Notice of Violation" assessing a civil  
22 penalty of \$50. From this, appellant appeals.

### 23 III

24 Emissions of this kind are avoidable by leaving the tar pot lid  
25 closed except when actually filling a bucket or charging the pot with  
26 asphalt. This procedure would further benefit the appellant by

27 FINAL FINDINGS OF FACT,  
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1 conserving the amount of propane fuel needed to keep the asphalt at  
2 working temperature. We take official notice that relief valves are  
3 available to assure that no safety hazard will result within the tanker.

4 IV

5 Any Conclusion of Law which should be deemed a Finding of Fact  
6 is hereby adopted as such.

7 From these Findings, the Pollution Control Hearings Board comes  
8 to these

9 CONCLUSIONS OF LAW

10 I

11 Appellant contends that the reading of smoke opacity by a trained  
12 observer is an arbitrary process where no special equipment is used.  
13 While reading opacity may not be an exact science, it nonetheless is a  
14 legally acceptable method of detecting air pollution. Sittner v. Seattle,  
15 62 Wn.2d 834 (1963) and International Paper Co. v. Southwest Air Pollution  
16 Control Authority, PCHB No. 77-55 (1977).

17 In emitting an air contaminant, smoke, for more than three minutes  
18 in any one hour, which contaminant exceeds 20 percent opacity, appellant  
19 violated WAC 173-400-040.

20 II

21 The maximum civil penalty allowed for this violation is \$250.  
22 RCW 70.94.431. The \$50 civil penalty assessed by respondent constitutes  
23 a reasonable penalty on the facts of this case. Diogo v. Puget Sound  
24 Air Pollution Control Agency, PCHE No. 993 (1976).

25 III

26 Any Finding of Fact which should be deemed a Conclusion of Law is

27 FINAL FINDINGS OF FACT,  
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1 hereby adopted as such.

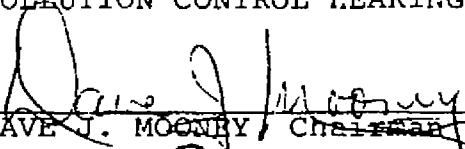
2 From these Conclusions, the Board enters this

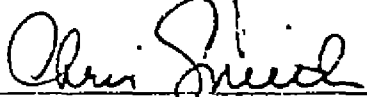
3 ORDER

4 The \$50 civil penalty is hereby affirmed.

5 DONE at Lacey, Washington, this 24<sup>th</sup> day of April, 1978.

6 POLLUTION CONTROL HEARINGS BOARD

7   
8 DAVE J. MOONEY, Chairman

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10 CHRIS SMITH, Member

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27 FINAL FINDINGS OF FACT,  
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